UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr.
GENERAL

CRC/C/SR.365
4 April 1997

ENGLISH
Original: FRENCH

COMMITTEE ON THE RIGHTS OF THE CHILD

Fourteenth session

SUMMARY RECORD OF THE 365TH MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 21 January 1997, at 10 a.m.

Chairperson: Mrs. BELEMBAOGO

CONTENTS

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of New Zealand (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.97-15296 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of New Zealand (continued) (CRC/C/28/Add.3; HRI/CORE/1/Add.33; CRC/C/Q/NZL.1 (list of issues); written replies by the Government of New Zealand, document without a symbol, English only)

1. At the invitation of the Chairperson, the New Zealand delegation resumed its place at the Committee table.

2. The CHAIRPERSON invited the New Zealand delegation to reply to the questions asked by the members of the Committee on the previous day.

3. Ms. GIBSON (New Zealand), replying to the question asked by Mr. Kolosov on the issue of Tokelaou, said that New Zealand had ratified the Convention on the Rights of the Child in 1993, when Tokelaou had still been a non-self-governing territory. Numerous institutional changes had gradually led to the establishment in the territory of an autonomous local Government with two main institutions, the "General Fono" and the Faipule Council. In view of the major administrative and constitutional reforms introduced in Tokelaou in 1994, the General Fono had preferred to postpone consideration of the ratification of the Convention on the Rights of the Child. However, in 1996, the representatives of the Government of Tokelaou had helped the regional UNICEF office prepare a translation of the Convention into the local language, the text of which had been widely distributed throughout the three atolls comprising the territory. In addition, the Government of New Zealand would provide the Tokelaou authorities with any assistance they would need when they considered acceding to the Convention.

4. With regard to the promotion and dissemination of the Convention, she said that its text had not been distributed in all the country's schools, but could be obtained free of charge from the office of the Commissioner for Children. The Convention had been translated into Maori and distributed in the kura kaupapa schools which provided instruction in Maori.

5. In reply to a question by Mrs. Sardenberg on the issue of access to education for young rural Maoris, she provided statistics showing a huge increase in the percentage of young girls enrolled in school, which had risen to 71 per cent between 1992 and 1996.

6. Ms. ARNOLD (New Zealand), replying to the question by Miss Mason on Maori marriage customs, said that, under the influence of Christianity, in particular, there were no longer many differences between Maori and non-Maori marriage customs. Maori customary law was taken into account in conformity with the Treaty of Waitangi, which protected the rights and property of the indigenous Maori inhabitants. The Government was trying to reduce the disparities affecting the Maoris in respect of development policy and had pledged to honour its commitments under the Treaty of Waitangi and to compensate the Maoris and return their land to them. The Government was also drafting additional measures to mitigate the injustices from which Maoris in poor areas suffered. The Ministry of Maori Development (Te Puni Kokiri),

which had been established in 1992, was designed to promote Maori interests and to organize consultations among them on development policies.

7. Mr. LISTER (New Zealand), replying to Mrs. Eufemio, said that many New Zealand legislative instruments took account of the best interests of the child; he gave the examples of the relevant articles of the Guardianship Act, the Matrimonial Property Act and the Family Proceedings Act.

8. With regard to the incorporation of human rights instruments into domestic law, he said that international instruments did not automatically become part of New Zealand law through the process of ratification, accession or acceptance and that, in order for an international instrument to have domestic effect, its provisions must either already exist in New Zealand or new legislation had to be enacted. In that connection, he referred to paragraph 73 of the core document (HRI/CORE/1/Add.33).

9. In reply to Mrs. Sardenberg, he said that all New Zealand citizens could lodge a complaint if they believed they were the victims of racial discrimination. The Race Relations Act had been adopted in 1972 and a Conciliator appointed to investigate complaints of that kind. The Department of Social Welfare also provided information on many issues relating to race relations.

10. Replying to Mr. Hammarberg, he said that, under the Films, Videos and Publications Classification Act, all video cassettes on sale or hire to the public had to be classified (unrestricted, objectionable and objectionable except in a range of circumstances). Under the provisions of article 120 of the Act, the Department of Internal Affairs employed inspectors to ensure that all video cassettes were properly classified. The police were also authorized to carry out similar checks. In addition, television broadcasts could even be banned in response to complaints filed under the code of practice of the broadcasting authorities. However, there was no clearly defined strategy in New Zealand to provide guidance for children in that area, although the Government intended to follow the example of the strategy adopted in Australia.

11. In reply to Miss Mason, he assured her that the criteria applied when children were separated from their parents who were in prison always took account of the best interests of the child. The Department of Corrections was responsible for adopting a prisons policy emphasizing the preservation of family relations and there was a detailed procedural manual to ensure that persons were detained under the best possible conditions. Specific provisions existed for women with children less than six months old. Men and women were entitled to the same visiting rights, although they varied somewhat from one prison to another. Prisoners were granted three days' parole to enable them to keep in touch with their family and special provisions existed under the Criminal Justice Act to provide prisoners with guidance with a view to their early release.

12. Mr. ANGUS (New Zealand), replying to Mrs. Karp, said that family group conferences participated directly in the administration of juvenile justice,

in accordance with procedures designed to ensure that the rights of and legal protection for children and young people were fully respected. Social workers played a major role in the conferences.

13. Regarding the right of parents to use "reasonable" force towards their children, he said that social and educational measures were taken to protect children against violence in general. The former Government had wanted to abolish article 59 of the Criminal Code, which authorized parents to use "reasonable force" to discipline their children, on the understanding that, ultimately it was for the courts to decide whether force was reasonable in a particular case. The present Government had not reached a consensus on the repeal of the article, although its studies had shown that parental behaviour had changed since 1991 and that, as a rule, they no longer resorted to severe physical punishment.

14. In reply to the question by Mrs. Badran on training for social workers, in particular with regard to human rights and the rights of the child, he said that a national training programme had been specially designed for them. With regard to Miss Mason's question about incest, he said that a survey on sexual abuse as a whole, including incest, had been conducted among 3,000 women. According to the survey, 10 per cent of sexual abuse occurred in the family. A range of services were available to children who had suffered sexual abuse. In that connection, he referred the members of the Committee to the written reply to question 53. Measures were also being taken to reimburse the legal and medical expenses of victims. Children aged over 14 could deal directly with the services concerned.

15. Mrs. KARP noted that the State party's legislation recognized the right of children to express their opinion before the courts, but what was the situation with regard to the right of children to be heard in daily life and in a less formal setting than the courts? She also asked whether indigenous children - who were particularly vulnerable - could be heard.

16. As to violence within the family, the fact that parents in New Zealand were authorized to use "reasonable" force raised a number of questions: had there been any cases in which force had been used without justification? Was the meaning of "reasonable" explained to parents? Were any information and educational measures taken to prevent abuses and what was the role of the Commissioner for Children in that regard? She also asked whether any parents had been prosecuted, tried and punished for sexual abuse and in particular for incest. It was stated in the report that corporal punishment was prohibited in schools and government institutions, but she would like to know what the situation was in private institutions. In her view, there should simply be an outright prohibition on corporal punishment. The State party should also dispel any misunderstandings about discrimination against Maori and other indigenous children by giving details of any positive measures which had been taken on their behalf.

17. Referring to child health and welfare, she noted that children aged over 16 could consult a doctor without their parents being informed. She asked whether any provision was made for a confidential system of information or consultation for children aged under 16 with particular medical problems and whether, when it was in the best interests of the child, children were

entitled to consult their medical records themselves. With regard to the age of consent for sexual relations, there was apparently some inconsistency between the provision of New Zealand legislation which set the minimum age for marriage at 16 and paragraph 27 of the report, according to which girls aged between 12 and 16 could have sexual relations if they were married.

18. Regarding children's mental health and the prevention of child suicides, she asked whether the new measures and initiatives planned by the authorities took account of the views of children and whether efforts were being made to ensure they were not doubly victimized (for example, by being interned). She also asked whether there were any guidelines governing the internment of children and whether children could refuse a decision to intern them and lodge an appeal.

19. Mr. MOMBESHORA noted that, according to a statement by the New Zealand Prime Minister, there was no poverty in New Zealand. He asked whether there were nevertheless some cases of poverty and what the authorities were doing about them. The information provided on the nutritional status of New Zealand's population was also somewhat too general. Information on efforts by the State party to ensure minimum food security and to deal with cases of malnutrition would be appreciated. He asked whether mothers were encouraged to breastfeed their children and whether it was necessary to overcome resistance to breastfeeding. He also asked whether further information could be provided on the Code of Rights for Consumers of Health and Disability Services.

20. It would also be useful if the delegation could indicate whether abortion was authorized other than on medical grounds and how New Zealand was participating in the Global Programme on AIDS. Like Mrs. Karp, he wished to know whether children aged under 16 could consult a doctor without their parents' permission.

21. Mr. HAMMARBERG said that, like other States parties, New Zealand had taken the view that the Convention contained a list of minimum requirements which had to be met in relation to respect for and the promotion of the rights of the child and that, whenever it conflicted with its own legislation, it should amend the latter. However, if a more proactive view of the Convention were adopted, the State party could hardly claim that it fully implemented all aspects of it. For example, although the principle of the best interests of the child was duly recognized in the New Zealand Children, Young Persons and their Families Act, he would like to know how the principle was reflected in the other acts and, in particular, in those relating to education.

22. With regard particularly to the right of children to protection from all forms of violence, which was provided for in article 19 of the Convention, it was apparent from the statements by the State party that the problem of the confidentiality of information on children, particularly medical records, was properly taken into account. The report also indicated that anyone could report a case of ill-treatment to the authorities and that the police and social services were required to investigate all cases. However, the possibility for parents to use "reasonable" force against their children (report, para. 188) gave rise to some concern as it might be assumed that some

forms of abuse were authorized. New Zealand should amend its legislation, as many other countries had already done, in order to send a clear signal to parents and children on that subject.

23. Where child labour was concerned, the State party had made a reservation to article 32 of the Convention on the grounds that its own legislation was adequate. Although New Zealand legislation set some limits on night work by children or the operation of machines by them, for example, it had to be emphasized that most States parties went even further in that regard, and that, in practice, no other country had made the same reservation. The overall principle was that a minimum age for employment always had to be set, possibly according to the step-by-step approach provided for in the relevant ILO requirements. Whatever the case, the matter required further consideration.

24. The situation of refugees in New Zealand should be reconsidered in order to avoid discrimination between those registered with UNHCR, who seemed to be satisfactorily cared for, and "spontaneous" refugees who apparently had problems in integrating. As to the acquisition of nationality in particular, the information provided showed that refugee children who had not been born in New Zealand had to wait until they were 18 to apply for New Zealand nationality unlike refugee children who had been born in New Zealand. He requested further information on that point.

25. Mrs. EUFEMIO said that she would like information on the attitude in New Zealand towards sexual relations before marriage and whether there were any pre-marital advisory services. What material assistance was provided for single fathers and mothers and what was done to ensure they were not ostracized? Regarding adoption, the procedure adoptive parents had to follow was clear; she would, however, like to know whether third parties were involved in some cases and whether any financial transactions took place. She was also concerned about the problem of adopted children who might find it difficult to integrate into their new family because they had known their biological parents and she asked whether children who had been separated from their biological parents at an early age were immediately declared adoptable. She asked whether any information was available on private arrangements between biological and adoptive parents.

26. Mrs. SARDENBERG, referring to the right of children and young persons to take part in decisions concerning them, said that a question had been asked the previous day about the remedies available to pupils affected by a decision to expel them from their school. She also asked whether complaints lodged with the Race Relations Conciliator, the Commissioner for Children and the Privacy Commissioner or other bodies had been evaluated and, if so, what trends had been apparent. Had the evaluation shown that certain groups of children were more often concerned than others?

27. The reply to question 31 on further measures to reduce the number of accidents stated that appropriate measures had already been taken, although they were apparently intended for the urban population. She asked whether there were any relevant data on Maori children and children from poor

backgrounds indicating an improvement in the trend. She also asked whether any consideration was given to how Maori and other children could mutually benefit from their specific cultural background.

28. Mr. ANGUS (New Zealand) said that information had already been provided, as requested by Mrs. Karp, on administrative and other measures to enable children to express their point of view. The Commissioner for Children was particularly attentive to that concern and the opinion of children, especially Maori children, was increasingly taken into account. Regarding abuse, he said that it was difficult to provide a figure on the number of complaints, prosecutions and convictions, but it should be emphasized that the law laid down strict penalties, including prison sentences.

29. Referring to Mr. Mombeshora's comments on the question of poverty, he said that, in practical and absolute terms, there was no poverty in New Zealand and that all New Zealanders had access to the basic necessities. However, as everywhere, there were perhaps cases of relative poverty and a number of programmes had been set up to assist the persons concerned, in particular by providing them with an income supplement and encouraging them to work and to participate in society. A working group on employment was involved in all those activities. There were compulsory large-scale nutritional programmes whose purpose was to provide a minimum diet and more specific programmes such as the "food banks" through which food parcels were distributed to needy families. To his knowledge, cases of serious malnutrition were extremely rare.

30. Lastly, in reply to the questions asked by Mrs. Eufemio on single-parent families, he said that a decline in the number of early pregnancies had recently been recorded, but the number of single-parent families had increased. There were advisory services for future spouses, but consultations were not compulsory. There were also programmes for parents with difficulties. In material terms, various forms of governmental assistance were provided for single-parent families, for whom a wide range of services set up in cooperation with family associations were available. As far as delinquency was concerned there was no proof of a causal link between the juvenile delinquency rate and single-parent families, but it was true that such cases did exist.

31. With regard to adoption, the New Zealand delegation believed that adoptive parents were no more protected than adoptive children. While support and advice were available for the former, the latter had the assurance that the Family Court put their best interests first. All adoptions had to be approved by a social worker and could not go ahead without the consent of both adoptive parents. The latter were not required to inform the biological parents of their child's development, but frequently did so without any particular problems arising. The law allowed them to refuse to provide such information if they believed that it might be contrary to the best interests of the child.

32. There was, moreover, no legal provision to prevent a person who wished to adopt a child from coming to a private agreement with parents who wanted their child to be adopted, subject to the express condition that no money should be involved. There had nevertheless been cases of couples who had

conceived a child and who had received support from the child's future adoptive parents during the mother's pregnancy, a practice which the courts had equated with responsibility for maintenance, and found not to be illegal.

33. Mr. LISTER (New Zealand) said that there were no strict rules relating to the provision of medical care for minors because young persons aged over 16 could agree to receive medical treatment without their parents' consent. The rule also applied to children aged under 16 if the doctor considered that they had sufficient understanding to take a decision. Moreover, the regional health authorities had adopted a series of measures to facilitate access to health care for young people, particularly through school medicine.

34. Under the Health Information Privacy Code, the parents or guardians of a child aged under 16 were not entitled to consult medical data relating to the child unless the competent authorities deemed that the child was incapable of exercising the rights conferred on him or her by the Code.

35. Regarding those sexual relations classified as offences by the 1961 Act, his delegation would try to provide the Committee with clarifications of the last sentence of paragraph 27 of the report, which dealt with the matter, before the end of the current session.

36. In connection with young persons' mental health, the health authorities had been doing everything possible for the past 20 years to ensure that mentally ill young people were not interned in psychiatric institutions, but treated as out-patients.

37. On the question of nutrition, his delegation could provide the Committee with a brochure published by the Ministry of Health and entitled "Progress on Health Outcome Targets", which dealt, inter alia, with the question. In that connection, he emphasized that, to his delegation's knowledge, no cases of serious malnutrition had been reported in New Zealand and there had been no campaign against breastfeeding.

38. In the legislative field, the Government believed that ratification of the Convention was but one stage in the process of strengthening the rights of children and it intended to go beyond the minimum rules embodied in that instrument. The Commissioner for Children was working along those lines in close cooperation with the Human Rights Commission, of which he was a member.

39. The relevant health statistics showed that the situation of the Maori was less satisfactory than that of the non-Maori in virtually all areas. However, it should be noted that the gap had narrowed considerably over the last 15 years.

40. Ms. GIBSON (New Zealand) said that, generally speaking, public agencies responsible for development policies were instructed to take account of the views expressed by citizens in general and by the Maori in particular and, where information was concerned, to give priority to dialogue. Occasionally, however, it seemed that, if their proposals were not adopted, the Maori considered that they had not been listened to; a reasonable consensus must, however, be reached that would take account of all the proposals made.

41. Ms. ARNOLD (New Zealand) said that, as the Maori were not a homogenous group, it was difficult to adopt a development policy on which that community unanimously agreed. In any event, where the measures taken to enable Maori children to express their views were concerned, a programme had been set up to develop awareness of sexism and racism among girls and to help them to express their opinions with greater confidence. In addition, the Ministry of Maori Development earmarked a considerable proportion of its budget for welfare and was currently setting up a unit for the promotion of Maori health. With regard to violence against Maori women, it was difficult to know whether the problem was getting worse, even though more and more victims of violence against women took shelter in the homes set up for them.

42. Mr. ANGUS (New Zealand), referring to ill-treatment, said that the best interests of the child took precedence over any considerations of respect for privacy and that citizens in general and persons who dealt with children in particular were required to report any cases of child abuse which came to their knowledge to the competent authorities.

43. Regarding child labour, his delegation would transmit to the Government the Committee's recommendation that a minimum age for employment should be set. However, he pointed out that schooling was compulsory and that children could do odd jobs, such as selling newspapers, only outside school hours. Refugee children who did not enter New Zealand under a refugee programme were not always entitled to the services offered by immigrant reception centres, but a wide range of social services provided by NGOs were available to them.

44. The number of complaints submitted by children to the Commissioner for Children was indeed increasing. The complaints, which related mainly to education and living conditions, were considered on a case-by-case basis in close cooperation with the Human Rights Commission.

45. Ms. GIBSON (New Zealand) said that the Government had decided to incorporate into the Education Act the right of children to be heard in proceedings to expel them. To conclude, she assured the Committee that she would transmit to the New Zealand Government the recommendations it had made on article 59 of the Crimes Act and the age at which children could acquire New Zealand nationality. Her delegation would also provide the Committee with more detailed information on malnutrition, cases in which sexual relations were considered an offence, assistance to refugee children and complaints submitted to the Commissioner for Children.

46. Mr. KOLOSOV asked to what extent Maori children would benefit from the financial compensation granted by the Government to indigenous communities in compensation for the use of part of their land.

47. Mr. MOMBESHORA asked whether the abortion legislation was not contrary to article 6 of the Convention.

48. Mr. HAMMARBERG asked whether the New Zealand Government intended to ratify the international instruments on statelessness and to withdraw the first reservation which it had made in respect of the Convention and which paved the way for discrimination against child asylum-seekers, to whom States parties were required to guarantee access to education, health and social

security. He also regretted that the New Zealand Government apparently considered that it was the rule rather than the exception for juvenile offenders to be detained together with adult offenders.

49. Mrs. KARP asked for information on the impact of economic policy on the right of indigenous people to receive an education in their own language and to develop their culture, as well as on the situation of disabled, and in particular Maori, children.

50. Ms. GIBSON (New Zealand) said that it was the responsibility of Maori iwi (the indigenous tribes) to manage the funds they had received in settlement of the complaints filed. The question of abortion had been the subject of a lengthy debate in New Zealand and a consensus had been reached that the right to abortion was a matter for women. With regard to the administration of juvenile justice, she said that, whenever possible, the courts attempted to replace prison sentences by social rehabilitation measures and that, as a result, imprisonment was the exception for minors and it was also exceptional for minors to be held together with adults.

51. The infrastructure to allow the Maori to receive an education in their own language had been considerably improved. She drew particular attention to the introduction of a Maori language immersion programme for pre-school children (Kohanga reo) and the creation of Maori language schools (Kura kaupapa Maori), whose purpose was to preserve Maori cultural values. Maori schools and pre-school establishments also received the same level of funding as other schools in New Zealand. In addition, the creation of the Maori Language Commission was proof of the Government's determination to preserve the language.

52. Mr. ANGUS (New Zealand) confirmed that the services providing assistance to disabled people no longer depended on the Ministry of Welfare, but on the Ministry of Health, but their budget had not been changed and there was no evidence of any negative impact on disabled Maori children.

The meeting was suspended at 12.25 p.m. and resumed at 12.30 p.m.

53. Mrs. SANTOS PAIS said she was pleased to note that, generally speaking, New Zealand legislation was entirely in keeping with the provisions of the Convention and that machinery to protect human rights was well established there. Against that favourable background, it might be regretted that the ratification of the Convention had not led to the enactment of additional legislation on behalf of children, which would have reflected a specific commitment on the Government's part towards the Convention, as a special instrument. Moreover, a number of areas required particular attention. For example, she urged the New Zealand authorities to consider, as soon as possible, withdrawing the reservations made in respect of articles 32 and 37 of the Convention. As the Children, Young Persons and Their Families Act dated from 1989, the legislation as a whole should be studied to ensure that each article of the Convention was properly reflected in it, particularly with regard to child labour, juvenile justice, the situation of refugee children and corporal punishment. The establishment of permanent machinery to serve as a focal point for the consideration of all child-related issues and to ensure horizontal and vertical coordination between the various agencies involved

would be required in order to develop a national strategy. In addition, the poorest children should continue to be a budgetary priority. Lastly, she suggested that the Commissioner for Children should be guaranteed greater independence.

54. Mr. HAMMARBERG said that he had taken note with satisfaction of the constructive initiatives New Zealand had taken in the various areas connected with children, particularly health, disabled children and violence within the family. However, the approach it had adopted to the various issues was still piecemeal because there was no overall strategy. The New Zealand authorities should review their legislation in order to ensure not only that it satisfied the minimum criteria required by the Convention, but also that it satisfactorily reflected all its innovative and proactive features. It was also unfortunate that there had not yet been any analysis of the harmful impact on children of the recent economic recession, which would have made it possible to chart the planned reforms more precisely. Finally, the independence of the Commissioner for Children should be better guaranteed.

55. Mr. KOLOSOV stressed the fact that the potential impact on children of any economic reforms should be considered before they were implemented. Referring to the children of Tokelaou, who did not yet enjoy the protection of the Convention, he suggested that, if the acquisition of sovereignty by the territory was further delayed, the authorities should discuss the situation of those children in their next periodic report.

56. Mrs. KARP said that she endorsed the comments made by her colleagues and emphasized the importance of adequate budget allocations for ill-treated and disabled children.

57. Mrs. EUFEMIO suggested that the New Zealand Government should pay closer attention to the problem of single-parent families, its causes and any potentially harmful repercussions on the children concerned.

58. Ms. GIBSON (New Zealand) noted with satisfaction that the members of the Committee had recognized that New Zealand legislation was compatible with the provisions of the Convention. The New Zealand authorities were nevertheless prepared to carry out a systematic and comprehensive review of their legislation in order further to improve it in the light of the Convention. Moreover, despite the economic crisis which had hit New Zealand so hard, budget priority had always been given to children and, in particular, to pre-school children. The Committee's comments on New Zealand's reservations to the Convention would be taken into consideration by the New Zealand Government.

59. The CHAIRPERSON said that the Committee had completed its consideration of the initial report of New Zealand. She welcomed the fruitful dialogue that had taken place with the New Zealand delegation and hoped that the many positive intentions of improving the situation of children would rapidly become a reality in New Zealand.

The meeting rose at 1.05 p.m.